

HOUSE BILL NO. 493  
INTRODUCED BY G. BRANAE

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ARRANGEMENT" HEALTH CARE FACILITIES THAT PROVIDE THEIR OWN EMPLOYEES TO PERFORM SERVICES AT AND ON BEHALF OF OTHER HEALTH CARE FACILITIES AND AT AND ON BEHALF OF PRIVATE OFFICES OF OTHER LICENSED HEALTH CARE WORKERS; EXEMPTING HEALTH CARE FACILITIES FROM THE DEFINITION OF "PROFESSIONAL EMPLOYER ORGANIZATION"; AND AMENDING SECTION 39-8-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-8-102, MCA, is amended to read:

**"39-8-102. Definitions.** As used in this chapter, unless the context indicates otherwise, the following definitions apply:

- (1) "Applicant" means a person that seeks to be licensed under this chapter.
- (2) "Client" means a person ~~who~~ that obtains all or part of its workforce from another person through a professional employer arrangement.
- (3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.
- (4) "Department" means the department of labor and industry.
- (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.
- (6) "Licensee" means a person licensed as a professional employer organization or group under this chapter.
- (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.
- (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under

which:

- (i) a professional employer organization or group assigns employees to perform services for a client;
- (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
- (iii) the employer responsibilities are shared by the professional employer organization or group and the

client.

(b) The term does not include:

- (i) services performed by a temporary service contractor;
- (ii) arrangements under which a person shares employees with a commonly owned company within the

meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group; ~~and~~

(iii) arrangements ~~exist~~ existing for employment of an independent contractor, as defined in 39-71-120; and

(iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(9) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(10) (a) "Professional employer organization" means:

~~(a)~~(i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

~~(b)~~(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

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